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AUG 16 2004

In re Application of

: OFFICE OF PETITIONS

Ralph et al.

:

Application No. 10/001,937

: DECISION ON PETITION

Filed: October 25, 2001

: UNDER 37 CFR 1.78(a)(3)

Attorney Docket No. 1759.17239-FOR

:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed May 24, 2004, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of the prior-filed nonprovisional applications set forth in the concurrently filed amendment.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

In the amendment supplied by the petitioner, the first application, Application No. 10/617,976, is listed as having a filing date of July 11, 2003. The above-identified application has a filing date of October 25, 2001. Therefore, the instant application cannot claim priority to an application that has a later filing date.

Accordingly, before the petition under 37 CFR § 1.78(a)(3) can be granted, a renewed petition under 37 CFR § 1.78(a)(3) and a substitute amendment¹ correcting the filing dates and/or the relationships of the prior-filed applications to the instant application is required.

¹ Note 37 CFR 1.121

Further correspondence with respect to this matter should be addressed as follows:

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Any questions concerning this matter may be directed to Paralegal Liana Chase at (703) 306-0482.
Any questions after September 28, 2004 should be directed to (571) 272-3206.

Frances Hicks
Frances Hicks
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

² Effective approximately September 28, 2004, the facsimile number will be 571-273-0025, which is when the Office of Petitions expects to move to the new quarters in Alexandria, Virginia. However, this number is not to be used for submitting formal papers, but merely is to be used for receiving courtesy and informal papers and petitions to withdraw from issue only. Courtesy and informal papers will not be made a part of the file record.